

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

Mack Industries, Ltd., *et al.*,

Debtors.

Chapter 7

Bankruptcy No. 17-09308
(Jointly Administered)

Honorable Janet S. Baer

NOTICE OF MOTION

Please take notice that, on Tuesday, September 26, 2023, at 10:00 a.m., I will appear before the Honorable Janet S. Baer, or any judge sitting in that judge's place, either in Courtroom 615 of the Everett McKinley Dirksen Federal Courthouse, 219 S. Dearborn, Chicago, IL 60604, or electronically as described below, and present the **Motion for Relief from Prior Order, and to Determine Amount of Priority Claim, and to Pay** brought by Ariane Holtschlag, not individually but as the chapter 7 Trustee for the jointly-administered debtors, a copy of which is attached.

Important: Only parties and their counsel may appear for presentment of the motion electronically using Zoom for Government. All others must appear in person.

To appear by Zoom using the internet, go to this link:
<https://www.zoomgov.com/>. Then enter the meeting ID and password.

To appear by Zoom using a telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and password.

Meeting ID and password. The meeting ID for this hearing is **160 731 2971** and the password is **587656**. The meeting ID and password can also be found on the judge's page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

Dated: August 31, 2023

**Ariane Holtschlag, not individually
but as chapter 7 Trustee for the estate
of Mack Industries, Ltd., *et al.***

By: /s/ Justin R. Storer
One of Her Attorneys

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CERTIFICATE OF SERVICE

I, Justin R. Storer, an attorney, certify that I served a copy of this notice and the attached application on each entity shown on the below list at the address shown and by the method indicated on August 31, 2023.

/s/ Justin R. Storer

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

Mack Industries, Ltd., et al.,

Debtors.

Chapter 7

Bankruptcy No. 17-09308
(Jointly Administered)

Honorable Janet S. Baer

**MOTION FOR RELIEF FROM PRIOR ORDER,
TO DETERMINE AMOUNT OF PRIORITY CLAIM, AND TO PAY**

On August 16, 2017, this Court entered an order (the “**G&M Fee Order**”) allowing Goldstein & McClintock LLP (“**G&M**”) an administrative expense claim, pursuant to 11 U.S.C. § 503(b)(3)(A), in the amount of \$35,604.04; *see* Case no. 17-09308 in this Court, Dkt. 212).

The G&M Fee Order is attached hereto as **Exhibit A**.

G&M has advised that, on or about July 26, 2017, they had received a \$29,500.00 retainer from their clients relating to matters provided-for in the G&M Fee Order. Crediting that, G&M is actually entitled to be paid \$6,104.04 (the “**Adjusted Claim**”).

Ariane Holtschlag, not individually, but as the chapter 7 Trustee for the jointly-administered estates of Mack Industries, Ltd., et al., (the “**Trustee**”) files this Motion (the “**Motion**”) seeking an order (a) modifying the G&M Fee Order to account for its receipt of the retainer (and so providing that the priority balance owed G&M is only the \$6,104.04 Adjusted Claim), (b) seeking clarification from this Court pursuant to Federal Rule of Bankruptcy Procedure 3012, given the

multiplicity of debtors in this jointly-administered case, that the Adjusted Claim is chargeable against the bankruptcy estate of Oak Park Avenue Realty, Ltd. (“***Oak Park***”), and shall be paid with funds from its estate, and (c) granting her authority to pay the Adjusted Claim to G&M.

JURISDICTION

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. § 1334, and Local Rule 40.3.1(a) of the United States District Court for the Northern District of Illinois.

2. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(1) and (b)(2)(A) in which the Court may constitutionally enter a final order, and the Trustee consents to the entry of a final order by the Court.

3. Venue of the above-captioned case (the “***Case***”) and of this motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. On March 24, 2017, Mack Industries, Ltd. (“***Mack Ltd.***”) filed a voluntary petition under chapter 11 of the Bankruptcy Code, commencing the “***Main Case.***”

5. On June 1, 2017, the Court entered an Order converting the Main Case to a case under chapter 7. (Case No. 17-09308, Dkt. 92.) On the same date, the U.S. Trustee duly appointed Ronald R. Peterson as the chapter 7 trustee. (Case No. 17-09308, Dkt. 84.)

6. Five entities related to Mack Ltd.—Mack Industries II LLC, Mack Industries III LLC, Mack Industries IV LLC, Mack Industries V LLC, and Mack Industries VI LLC—also filed petitions for relief under chapter 7 of the Bankruptcy Code, and the U.S. Trustee appointed Ronald R. Peterson as the chapter 7 trustee in these additional cases (collectively with the Case, the “**Mack Cases**”). (See Case No. 17-16859, Dkt. 8; Case No. 17-17106, Dkt. 6; Case No. 17-17109, Dkt. 7; Case No. 18-03445, Dkt. 6; Case No. 18-03451, Dkt. 5.)

7. On June 21, 2017, and February 15, 2018, the Court ordered the joint administration of the Mack Cases. (Case No. 17-09308, Dkt. 110 & 369.)

8. G&M, representing certain creditors of Oak Park Avenue Realty, Ltd. (“**Oak Park**”), an entity related to Mack Ltd., filed an involuntary petition for relief under chapter 11 of the Bankruptcy Code against Oak Park (the “**Oak Park Case**”). (Case No. 17-16651, Dkt. 1.)

9. On June 29, 2017, the Court entered an order granting relief in the Oak Park Case and, on July 12, 2017, granted Oak Park’s motion to convert the Oak Park Case to a case under chapter 7. (See Case No. 17-16651, Dkts. 22 & 29.)

10. The U.S. Trustee appointed Ronald R. Peterson as the interim chapter 7 trustee in the Oak Park Case. (Case No. 17-16651, Dkt. 31.) and became the permanent case trustee at the meeting of creditors conducted pursuant to § 341 of the Bankruptcy Code. The Oak Park Case is being jointly administered with the Mack Cases (Case No. 17-09308, Dkt. 132), all under the auspices of the Main Case.

11. On August 2, 2017, G&M filed in the Main Case its “Motion for Entry of an Order Allowing Administrative Expense Claim.” (Case No. 17-09308, Dkt. 144.)

12. On August 16, 2017, the Court entered the G&M Fee Order, granting this Motion (with a miniscule reduction in the award requested), and so allowing G&M compensation in the amount of \$35,604.04.

13. The Trustee’s counsel has communicated with professionals at G&M and has been advised that G&M had received a retainer from its clients, the petitioning creditors of Oak Park, in the aggregate amount of \$29,500.00.

14. The Trustee now seeks an order (a) modifying the G&M Fee Order to account for this retainer, (b) memorializing that the Adjusted Claim is to be paid from Oak Park’s estate, and not that of any other debtor, and (c) allowing her to pay the Adjusted Claim in satisfaction of the G&M Fee Order.

BASIS FOR THE REQUESTED RELIEF

15. The predicate statutes and rules for the Trustee’s requested relief are 11 U.S.C. §§ 363(b), 726, and 507, as well as Federal Rules of Bankruptcy Procedure 1015(b), 2002(a), 3012, and 9024.

Motion for Relief from Prior Order

16. Pursuant to Federal Rule of Civil Procedure 60(b), as made applicable in this Court by Federal Rule of Bankruptcy Procedure 9024, on motion and on just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding, for the grounds that the judgment has been satisfied, or for any other reason that justifies relief.

17. The G&M Fee Order and its \$35,604.04 award have been satisfied, in part, due to G&M's possession of the \$29,500.00 retainer from its clients.

18. Relief is justified from the G&M Fee Order, to the extent that it has been satisfied, on the grounds that G&M, after applying the retainer, is entitled to an Adjusted Claim of \$6,104.04.

19. To ensure the appropriate administration of this case, the Trustee requires that the G&M Fee Order be modified to credit the \$29,500.00 retainer, and so provide that G&M shall only be paid an Adjusted Claim of \$6,104.04, not the full \$35,604.04 awarded in the G&M Fee Order.

Motion to Determine Priority Claim

20. Pursuant to Federal Rule of Bankruptcy Procedure 3012(a)(2), on request by any party in interest, after notice – to the holder of the claim and any other entity that the Court designates – the Court may determine the amount of a claim entitled to priority under 11 U.S.C. § 507.

21. Because the \$35,604.04 award arose from G&M's "petitioning for entry of an order for relief on the involuntary bankruptcy filing of Oak Park Avenue Realty, Ltd.," in the service of a multitude of creditors "with specific directions to file an involuntary bankruptcy against [Oak Park]," it arises out of the Oak Park Case. (See G&M's Motion, Case No. 17-09308, Dkt. 144.)

22. The "joint administration" of related bankruptcy cases, as took place here, is merely a procedural device that enables the Court to efficiently oversee multiple bankruptcy estates, and does not affect substantive rights of claimants or

respective debtor estates. (*See* F.R.B.P. 1015(b) *and In re Las Torres Development, L.L.C.*, 413 B.R. 687, 692-93 (Bankr. S.D.Tex. 2009).)

23. Consequently, because the G&M's \$35,604.04 award arose from actual, necessary expenses, incurred by it in its filing the involuntary petition that commenced the Oak Park Case, 11 U.S.C. § 507(b)(3)(A), it (and so the Adjusted Claim) would be appropriately designated a priority claim owed by the Oak Park estate.

Motion to Pay

24. The Trustee has funds on hand in the Oak Park estate to pay the Adjusted Claim, now outstanding for six years, and seeks authority to do so.

25. The Trustee submits that payment of the Adjusted Claim is fair, reasonable, and warranted under the circumstances.

26. Pursuant to 11 U.S.C. § 363(b)(1), the Trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

27. Pursuant to 11 U.S.C. § 726(a)(1), property of the bankruptcy estate shall be distributed, first, in payment of claims of the kind specified in, and the order specified in, section 507 of the Bankruptcy Code.

28. Pursuant to 11 U.S.C. § 507(a)(2), high priority is awarded to claims for administrative expenses allowed under section 503(b) of the Bankruptcy Code, as G&M's award was (and as the Adjusted Claim will be).

NOTICE

29. At least twenty-one (21) days' notice of this Motion has been given to all parties requesting notice in the Case via the Court's CM/ECF system. Based on the circumstances, the Trustee respectfully requests that the Court, pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(1), find that, for cause shown, the notice being given is sufficient.

30. Notice has been given to G&M, as well as one of its principals, Matthew McClintock, via first-class mail.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court enter an order (a) Modifying Goldstein & McClintock LLLP's "G&M Fee Order," to credit the \$29,500.00 retainer they had been paid, and so providing that the actual balance of their claim is \$6,104.04, (b) finding that this payment is a claim owed exclusively by the bankruptcy estate of Oak Park Avenue Realty, Ltd., (c) authorizing her to pay \$6,104.04 to Goldstein & McClintock LLLP in satisfaction of the G&M Fee Order, and (d) granting such other and further relief as this Court deems just and appropriate.

Dated: August 31, 2023

**Ariane Holtschlag, not individually
but as chapter 7 Trustee for the estate
of Mack Industries, Ltd., *et al.***

By: /s/ Justin R. Storer
One of Her Attorneys

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